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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RICHARD WEDDLE,	Case No. 3:16-cv-00634-MMD-VPC
	ORDER
v.	
ISIDRO BACA, <i>et al.</i> ,	
Defendants.	

This action is a pro se civil rights amended complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on September 26, 2017. (ECF No. 11). A follow-up order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF No. 16, 18). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 20).

In October 2017, Plaintiff filed identical motions for temporary restraining order and preliminary injunction (ECF No. 13, 14) to prevent the spoliation of audio and video recordings of his disciplinary hearings. (ECF No. 13 at 2-3.) Plaintiff asserts that, without that evidence, he would be able to litigate his case and win but the spoliation of that evidence could affect his punitive damages award. (*Id.*) The Court denies the motions

1 because Plaintiff has not established that he would suffer irreparable harm in the absence
2 of preliminary relief.¹ Federal Rule of Civil Procedure 37(e) addresses spoliation of
3 electronically stored information and provides sanctions against an offending party
4 including a finding that the spoiled evidence was unfavorable to that party. As such, the
5 Court denies the motions for injunctive relief (ECF No. 13, 14).

6 For the foregoing reasons, it is ordered that:

7 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is granted.
8 Plaintiff will not be required to pay an initial installment of the filing fee. In the event that
9 this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. §
10 1915(b)(2).

11 2. The movant herein is permitted to maintain this action to conclusion without
12 the necessity of prepayment of any additional fees or costs or the giving of security
13 therefor. This order granting leave to proceed *in forma pauperis* will not extend to the
14 issuance and/or service of subpoenas at government expense.

15 3. Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections
16 shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the
17 preceding month's deposits to Plaintiff's account (Richard Weddle, #85306), in the
18 months that the account exceeds \$10.00, until the full \$350.00 filing fee has been paid
19 for this action. The Clerk of the Court will send a copy of this order to the Finance Division
20 of the Clerk's Office. The Clerk of the Court will also send a copy of this order to the
21 attention of the Chief of Inmate Services for the Nevada Department of Corrections, P.O.
22 Box 7011, Carson City, NV 89702.

23
24 ¹Injunctive relief, whether temporary or permanent, is an "extraordinary remedy,
25 never awarded as of right." *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 24 (2008).
26 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
27 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
28 that the balance of equities tips in his favor, and that an injunction is in the public interest."
Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009)
(quoting *Winter*, 555 U.S. at 20). Furthermore, under the Prison Litigation Reform Act
("PLRA"), preliminary injunctive relief must be "narrowly drawn," must "extend no further
than necessary to correct the harm," and must be "the least intrusive means necessary
to correct the harm." 18 U.S.C. § 3626(a)(2).

1 4. The Clerk of the Court will electronically serve a copy of this order and a
2 copy of Plaintiff's amended complaint (ECF No. 10) on the Office of the Attorney General
3 of the State of Nevada by adding the Attorney General of the State of Nevada to the
4 docket sheet. This does not indicate acceptance of service.

5 5. Service must be perfected within ninety (90) days from the date of this order
6 pursuant to Fed. R. Civ. P. 4(m).

7 6. Subject to the findings of the screening order and follow-up order (ECF No.
8 11, 16), within twenty-one (21) days of the date of entry of this order, the Attorney
9 General's Office must file a notice advising the Court and Plaintiff of: (a) the names of the
10 defendants for whom it accepts service; (b) the names of the defendants for whom it does
11 not accept service, and (c) the names of the defendants for whom it is filing the last-
12 known-address information under seal. As to any of the named defendants for whom the
13 Attorney General's Office cannot accept service, the Office must file, under seal, but will
14 not serve the inmate Plaintiff the last known address(es) of those defendant(s) for whom
15 it has such information. If the last known address of the defendant(s) is a post office box,
16 the Attorney General's Office must attempt to obtain and provide the last known physical
17 address(es).

18 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
19 must file a motion identifying the unserved defendant(s), requesting issuance of a
20 summons, and specifying a full name and address for the defendant(s). For the
21 defendant(s) as to which the Attorney General has not provided last-known-address
22 information, Plaintiff shall provide the full name and address for the defendant(s).

23 8. If the Attorney General accepts service of process for any named
24 defendant(s), such defendant(s) must file and serve an answer or other response to the
25 amended complaint within sixty (60) days from the date of this order.

26 9. Henceforth, Plaintiff must serve upon defendant(s) or, if an appearance has
27 been entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
28 document submitted for consideration by the Court. Plaintiff must include with the original

1 document submitted for filing a certificate stating the date that a true and correct copy of
2 the document was mailed or electronically filed to the defendants or counsel for the
3 defendants. If counsel has entered a notice of appearance, Plaintiff must direct service to
4 the individual attorney named in the notice of appearance, at the physical or electronic
5 address stated therein. The Court may disregard any document received by a district
6 judge or magistrate judge which has not been filed with the Clerk, and any document
7 received by a district judge, magistrate judge, or the Clerk which fails to include a
8 certificate showing proper service.

9 10. This case is no longer stayed.

10 11. The motions for temporary restraining order and preliminary injunction (ECF
11 No. 13, 14) are denied.

12 DATED THIS 20th day of February 2018.

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16 MIRANDA M. DU
17 UNITED STATES DISTRICT JUDGE
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